

REMARKS

Claims 1, 2, 4 to 13, 15 to 24, and 26 to 40 are pending in this application. Of these, claims 1, 12, 23, 33 and 37 are independent.¹ Favorable reconsideration and further examination are respectfully requested.

Initially, claim 23 was objected to for using the language "an article comprising...". Without conceding the propriety of the objection, Applicant has amended claim 23 and its corresponding dependent claims along the lines suggested by the Examiner. However, Applicant has used the word "machine" instead of "computer", since many types of machines other than computers include processor(s) that are capable of executing instructions to produce a result. The claim language is thus believed to be proper, and withdrawal of the objection is requested.

The claims were rejected under 35 U.S.C. §101 for allegedly failing to comply with the utility requirement. In particular, it was said in the Office Action that "[s]ince there are no practical applications claimed, i.e., no physical transformation taken place, nor a useful, concrete and tangible result being produced, the claims are non-statutory". Applicant respectfully disagrees. As explained in the enclosed memorandum from John J. Love, Deputy Commissioner For Patent Examination Policy,

A practical application in this context can be the result itself, and does not require that steps or additional limitations be added to the claims...It is the result that should be the focus. If the result has a real world practical application/use, then the test has been satisfied. *The claim need not include the uses to which the result is ultimately put, just the result itself.* (emphasis added)

¹ The Examiner is urged to independently confirm this recitation of the pending claims.

In this case, each of the independent claims aligns data in a one frame of data, based on the phase of another frame, to make a start of the second frame coincide with a start of a byte boundary.

As explained in the application,

Data frames are transmitted over an optical network in a serial data stream. A de-serializer device is required at the termination of the optical network in order to convert the serial data stream to parallel data. The conversion, however, can change the byte alignment (phase) of the frames. As a result, the frame and byte boundaries of the converted data are unknown. A data framer may be used at the recipient end of the optical network to restructure the frame and thereby correct any misalignment (i.e., phase errors).²

The claims' result, which is to make a start of the second frame coincide with a start of a byte boundary has a practical application in that it can correct for misalignment of byte boundaries. Thus, the output result of the claims has a real world practical application/use, therefore, the test for practical applicability has been satisfied according to the Deputy Commissioner.

For at least the foregoing reasons, Applicant submits that the claims comply fully with §101. There being no other outstanding issues, Applicant respectfully submits that the application is in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's undersigned attorney can be reached at the address shown below. All telephone calls should be directed to the undersigned at 617-521-7896.

² Application, page 2.

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to Deposit Account 06-1050 referencing Attorney Docket No. 10559-697001.

Respectfully submitted,

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